

Date of Hearing: April 30, 2013

ASSEMBLY COMMITTEE ON VETERANS AFFAIRS

Al Muratsuchi, Chair

AB 296 (Wagner) – As Introduced: February 11, 2013

SUBJECT: Attorneys

SUMMARY: Grants provisional licenses to practice law to spouses of military members. Specifically, this bill:

- 1) Directs the State Bar of California to issue a provisional license to practice law in California to an applicant who:
 - a) Is an active member in good standing of the bar of another state, possession, or territory;
 - b) Is the spouse of an active duty servicemember of the Armed Forces of the United States assigned to a duty station in California under official active duty military orders;
 - c) Supplies evidence satisfactory to the State Bar of California that he or she is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders;
 - d) Holds a current license to practice law in another state, district, or territory of the United States;
 - e) Establishes that he or she is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction;
 - f) Pays annual bar membership dues; and
 - g) Complies with all ethical, legal, and continuing legal education obligations.
- 2) States that the provisional license shall be valid until the active duty member of the Armed Forces is no longer assigned a duty station in California under official active duty military orders or until the provisional licenseholder has passed the Attorneys' Examination.

EXISTING LAW:

- 1) States that to be certified to the Supreme Court for admission, and a license to practice law, a person who has been admitted to practice law in a sister state, United States jurisdiction, possession, territory, etc., must:
 - a) Be of the age of at least 18 years.
 - b) Be of good moral character.
 - c) Have passed the general bar examination given by the examining committee.
- 2) However, if that person has been an active member in good standing of the bar of the admitting sister state or United States jurisdiction, possession, or territory for at least four

years immediately preceding the first day of the examination applied for, he or she may elect to take the Attorneys' Examination rather than the general bar examination.

- 3) Attorneys admitted less than four years and attorneys admitted four years or more in another jurisdiction but who have not been active members in good standing of their admitting jurisdiction for at least four years immediately preceding the first day of the examination applied for must take the general bar examination administered to general applicants not admitted as attorneys in other jurisdictions.
- 4) Have passed an examination in professional responsibility or legal ethics as the examining committee may prescribe.
- 5) Be certified by the State Department of Social Services and not being non-compliant with a court-ordered child or family support obligation.

FISCAL EFFECT: Unknown at this time.

COMMENTS:

Issue: According to the author:

The ability to practice law in California requires an individual to possess a license which comes with several conditions, which can cause lengthy re-employment delays for military spouses who practice law and move between states. Because of these delays and the expense involved in re-licensure, many spouses decide not to practice in their professions. This is a difficult financial and career choice issue for military members and their spouses, potentially impacting their desire to stay in the military.

California has approximately 72,000 military spouses (civilians married to servicemembers) residing here in any given year (California Research Bureau, *Professional Licensing and Military Spouses*. (2013). S-13-001). 95% of military spouses are women. Over a third of military spouses are employed in professions that require some sort of license or certificate. (*Professional Licensing and Military Spouses*) Additionally a recent survey showed that more than two-thirds of all service members state their decision to re-enlist was largely or moderately affected by their spouses' career prospects. (U.S. Department of the Treasury and U.S. Department of Defense. (2012). *Supporting Our Military Families: Best Practices for Streamlining Occupational Licensing Across State Lines*).

Out-of-state attorneys practicing law in California

These are three programs that currently permit a person who is eligible to practice law in another state to practice law in California, subject to the limitations, restrictions and other provisions of the governing statutes and rules.

1) Registered Legal Service Attorneys

Rule 9.45 of the California Rules of Court governs registered legal services attorneys. Subject to all applicable rules, regulations, and statutes, an out-of-state attorney practicing law under that rule may practice law in California only while working at a qualifying legal

services provider, as defined in the rule, under the supervision of an attorney who is employed by the qualifying legal services provider and who is an active member in good standing of the State Bar of California. An attorney supervising a registered legal services attorney must meet the requirements of Rule 9.45(h) relating to number of years in practice, required level of supervision, and other details.

2) Pro Hac Vice

Under Rule 9.40 of the California Rules of Court, an out-of-state attorney who has been retained to appear in a particular case pending in a California court may, in the discretion that court, be permitted upon written application to appear as counsel pro hac vice, provided that an active member of the State Bar of California is associated as attorney of record. Rule 9.40 contains other details, requirements, and limitations governing pro hac vice counsel.

3) Out-of-State Attorney Arbitration Counsel

Under Code of Civil Procedure Section 1282.4, Rule 9.43 of the California Rules of Court, and Rules 3.380 – 3.382 of the Rules of the State Bar of California, an out-of-state attorney may represent a party in connection with an arbitration in California, subject to approval by the arbitrator or arbitral form and other applicable provisions in the statute and rules. The out-of-state attorney must be retained to appear in association with an active member of the State Bar of California who is attorney of record in the arbitration.

It is unclear how many military spouses this bill would affect. Nevertheless, as stated by the author the inability to practice law in California would pose a significant barrier to employment for the attorney spouse. He or she might be able to find an attorney position which does not require admission to the California Bar as set forth above, but those positions would be far fewer than those requiring state bar admission. The programs summarized above are by nature quite limited in scope.

Policy Question for Members: Should the provisional license have an expiration, requiring the attorney spouse to be admitted to the California Bar after a reasonable period for preparation?

The bill would grant an open-ended provisional license; the license continues as long as the military member is stationed here, which could be several years. The general bar exam and the attorneys exam are given twice a year. Perhaps it makes sense to grant a reasonable provisional license period so that the attorney spouse may seek immediate employment while studying for the bar or attorneys exam but not have an open-ended provisional license term. Moreover, due to timing of the bar and attorneys exam dates, requiring the attorney spouse to take the very next bar might result in him/her paying substantial late registration fees in addition to the significant base cost of the exam.

For example:

On time filing for the July 2013 bar was due by April 1, 2013 and costs attorney applicants \$892.00. However, if an applicant files late, additional charges apply:

April 2, 2013 – April 30, 2013	\$ 50.00
May 1, 2013 – June 17, 2013	\$250.00

Thus, if it is required that provisional licensees take the bar or attorneys exam it is reasonable to give them sufficient time to prepare and apply without incurring late charges.

Policy Question for Members: Should the provisional license applicant have to meet similar other standards to those for out of state/out of country attorney applicants?

Out of state/country attorney applicants must meet several requirements in addition to passing the bar or attorneys exam. They must:

- 1) Be of the age of at least 18 years;
- 2) Be of good moral character; and
- 3) Have passed an examination in professional responsibility or legal ethics as the examining committee may prescribe.

These requirements seem reasonable, not overly onerous, and calculated to protect the public. The age requirement is designed to make sure that attorneys have reached the age of majority in the state and presumably possess sufficient maturity to handle important, sometimes critical, legal matters. The moral character requirement is intended to check that applicants have the proper moral character to handle legal matters and finances, including client money. The professional responsibility exam is designed to ensure that attorneys understand their duties of professional responsibility including to their clients and the courts.

Suggested amendments: The author has indicated he is willing to accept the following amendments:

Applicants must:

- 1) Be of the age of at least 18 years;
- 2) Be of good moral character;
- 3) Have passed an examination in professional responsibility or legal ethics as the examining committee may prescribe;
- 4) Take and pass the bar exam or attorneys exam within one year from the date of issuance of the license.

The bill as amended would balance the hardship an attorney spouse (and military family) would bear if the spouse could not seek immediate employment with the concerns of the State Bar to protect the public and regulate the practice of law in California.

REGISTERED SUPPORT / OPPOSITION:

Support

California Communities United Institute

Opposition

None on file.

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